

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0345
Gross Retail Tax—Commercial Printing
For Years 2000 & 2001

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ISSUE

I. Gross Retail Tax—Commercial Printing

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-1-1; IC § 6-2.5-1-2; IC § 6-2.5-2-1; IC § 6-2.5-4-1; 45 IAC 15-5-3(8); 45 IAC 2.2-1-1; 45 IAC 2.2-2-1; 45 IAC 2.2-4-1; *The Frame Station v. Indiana Department of Revenue*, 771 N.E.2d 129 (Tax Ct., 2002)

Taxpayer protests the assessment of gross retail tax on retail unitary transactions in its commercial printing business.

STATEMENT OF FACTS

Taxpayer, an S corporation whose two equal shareholders comprise the operations staff, is a commercial printer. Items taxpayer prints include business cards, posters, brochures, and stationery. Taxpayer also takes custom orders for specialty items such as wedding invitations with raised lettering, signs, and other marketing supplies. Further facts will be added as necessary.

I. Gross Retail Tax—Commercial printing

DISCUSSION

Taxpayer, an S corporation whose two equal shareholders comprise the operations staff, is a commercial printer. Items taxpayer prints include business cards, posters, brochures, and stationery. Taxpayer also takes custom orders for specialty items such as wedding invitations with raised lettering, signs, and other marketing supplies. Taxpayer collects and remits the state's gross retail tax on materials it prints. The invoice form itemizes labor and materials. Taxpayer does not collect or remit the state's gross retail tax on the labor portion of the billing invoice. The audit found that sales of printed materials fell under the definition of a retail unitary transaction pursuant to 45 IAC 2.2-1-1. A retail unitary transaction includes all items of property

and/or services for which a total, combined charge is computed for payment. The audit stated that it was inconsequential that services, which are not otherwise taxable, such as printing on material supplied by the customer, are included. Therefore, the invoice total, both labor and materials for printed materials, were subject to the state's gross retail tax.

Taxpayer's protest relies on phone calls made to the Department. Taxpayer stated that phone calls to the Department elicited assurances that taxpayer's labor charges were not taxable, only the materials charges were taxable. In addition, taxpayer was informed that the transactions at issue were not retail unitary retail transactions. Taxpayer stated that he was advised not to collect or remit gross retail tax on the labor charges, and was referred to Sales Tax Bulletins # 60 and # 69. Sales Tax Bulletin # 60 does not apply to taxpayer as it concerns construction contractors. Sales Tax Bulletin # 69 also does not apply to taxpayer as it concerns exemptions for items purchased by commercial printers, not the products commercial printers sell. Taxpayer is currently collecting and remitting the state's gross retail tax on labor and materials based on the audit's advice, but feels the 2000 and 2001 assessments are improper because taxpayer relied on erroneous information.

Pursuant to IC § 6-8.1-5-1(b) and 45 IAC 15-5-3(8), a "notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the assessment is made." Pursuant to IC § 6-2.5-2-1, a "person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state." *See also*, 45 IAC 2.2-2-1.

The specific statutes and regulations at issue in this protest concern the nature of retail unitary transactions. IC § 6-2.5-1-1 defines a "unitary transaction" as follows: it "includes all items of personal property and services which are furnished under a single order or agreement and for which a total combined charge or price is calculated." IC § 6-2.5-1-2 defines a "retail transaction" as a "transaction of a retail merchant that constitutes selling at retail as described in IC 6-2.5-4-1." A "retail unitary transaction" is a "unitary transaction that is also a retail transaction." IC § 6-2.5-4-1 provides in pertinent part:

- (b) A person is engaged in selling at retail when, in the ordinary course of his regularly conducted trade or business, he:
 - (1) acquires tangible personal property for the purpose of resale; and
 - (2) transfers that property to another person for consideration.
- (c) For purposes of determining what constitutes selling at retail, it does not matter whether:
 - (1) the property is transferred in the same form as when it was acquired;
 - (2) the property is transferred alone or in conjunction with other property or services; or

(3) the property is transferred conditionally or otherwise.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) except as otherwise provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

45 IAC 2.2-1-1 tracks the language of IC § 6-2.5-1-1 in defining a unitary transaction. 45 IAC 2.2-4-1 tracks the language of IC § 6-2.5-4-1(c) and IC § 6-2.5-4-1(e) in defining a retail unitary transaction.

Indiana's Tax Court in *The Frame Station v. Indiana State Department of Revenue*, 771 N.E.2d 129 (Tax Ct., 2002), ties together all these statutes and regulations, and applies them to a business similar in nature to the one at issue in the present tax protest. The issue in *Frame Station* was whether their sales of custom-framed art constituted a retail unitary transaction and were therefore subject to Indiana's gross retail tax. Frame Station provided custom framing services, framing its customer's art in frames that it had built or specially ordered. When Frame Station billed its customers, it recorded separate subtotals on the invoices, one for the framing service and the other for the physical frame itself. During the tax years at issue, Frame Station's customers paid no money in advance for custom framing; rather, they paid a total price for the framing service and frame when they picked up the completed project. Frame Station collected and remitted gross retail tax only on the price of the frame itself, not on the price for framing the art. An audit determined Frame Station's services were also subject to the state's gross retail tax because both the sale of the frame and the service of framing the art constituted a retail unitary transaction pursuant to IC § 6-2.5-4-1(e).

The Tax Court held that Frame Station's transactions were taxable retail unitary transactions pursuant to IC § 6-2.5-4-1(e). The Court examined the statute, stating it "permits the imposition of sales tax on the otherwise non-taxable services when the services are performed with respect to property prior to the transfer of the property" to the buyer or customer. *Frame Station*, 771 N.E.2d 129 at 131. The Court cited a prior decision that stated a retail unitary transaction exists when the transfer of the property and rendition of services were "inextricable and indivisible." Identifying the point at which the transfer of property occurs is key. If services are performed prior to the transfer of property, then the transaction constitutes a taxable retail unitary transaction under IC § 6-2.5-4-1(e).

As applied in the instant case, the evidence did show that taxpayer's customers pay the total price for their printed materials when they pick them up, after all printing services have been

performed. The services are performed prior to the transfer of the printed materials. Therefore, these transactions are taxable retail unitary transactions.

FINDING

Taxpayer's protest concerning the assessment of the state's gross retail tax on retail unitary transactions in its commercial printing business is denied.

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